

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5012 of 2014 (O&M)
Date of decision : 11.05.2018

Gurdev Kaur

...Petitioner

Versus

Jasbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Nitin Thatai, Advocate for the petitioner.

Mr. N.K. Vadehra, Advocate for respondent Nos.1 and 2.

Mr. B.R. Mahajan, Sr. Advocate with
Mr. Akhilesh Vyas, Advocate as Amicus Curiae.

ANIL KSHETARPAL, J.

The defendant-petitioner is in the revision petition against the order passed by the trial Court dated 14.03.2014.

The plaintiff while filing the suit relied upon the testamentary document executed by Ujagar Singh dated 01.01.1993. During the pendency of the suit, the plaintiff filed an application under Section 65 of the Evidence Act for permission to lead secondary evidence as the original document had been lost. This Court vide order dated 18.04.1996 while deciding a revision petition filed by the petitioner directed the trial Court to frame an issue on the fact that whether the loss of the testamentary document has been proved or not.

Thereafter, learned trial Court framed the issue and after recording the evidence, application for secondary evidence was allowed vide order dated 26.10.2006. Once again, the petitioner filed Civil Revision No.5946 of 2007, which was disposed of vide order dated 17.03.2009 with the consent of the counsel for the parties.

Now by order dated 14.03.2014, learned Court after discussing the evidence available on the file has held that loss of the testamentary document stands proved and, therefore, the application for secondary evidence has been allowed.

Once again, the defendant-petitioner has challenged the aforesaid order dated 14.03.2014. Learned counsel for the petitioner has submitted that the loss of document has not been proved in absolute terms and, therefore, the order passed by the learned Court is erroneous.

This Court has considered the submission, however, do not find any substance therein. Although, it was not required, however, learned trial Court has framed the issue and permitted the parties to lead evidence. After leading evidence, the Court has found that the loss of the Will-testamentary document is proved. In the considered opinion of this Court, such determination is only interim in nature and not binding on the Court while finally deciding the suit. The suit is still pending and is required to be decided in accordance with the evidence to be led by the parties. The findings arrived at by the Court in the impugned order is result of an enquiry held by the Court. A reading of the order also shows that the learned trial Court was conscious of the aforesaid fact and has held that the present proceedings are merely enquiry proceedings. In such circumstances, the

finding arrived at by the learned trial Court cannot be said to be final.

In view of the aforesaid, the present revision petition is disposed of with the observations that the learned trial Court would proceed with the trial of the suit and finally adjudicate the dispute between the parties after appreciating the evidence available on the file. Needless to say that the order under challenge shall not be treated as final adjudication and would not come in the way of the trial Court while deciding the suit.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

11.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No